

AMENDED IN SENATE AUGUST 24, 1998

AMENDED IN SENATE AUGUST 19, 1998

AMENDED IN SENATE JUNE 25, 1998

AMENDED IN ASSEMBLY APRIL 23, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1950

Introduced by Assembly Member Torlakson
(Principal coauthor: Assembly Member Morrow)
(Principal coauthor: Senator Burton)

February 17, 1998

~~An act to amend Section 1375 of, and to repeal Section 1368.4 of, the Civil Code, to add Section 664.7 to, and to add Title 7.5 (commencing with Section 576.5) to Part 2 of, *An act to add Section 664.7 to the Code of Civil Procedure*, and to amend Section 19719 of the Revenue and Taxation Code, relating to liability.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1950, as amended, Torlakson. Liability: construction defects: insurance defense.

~~(1) Existing law, the Davis-Stirling Common Interest Development Act, prescribes conditions for a common interest development association to satisfy before it commences an action for damages against a builder of the development for a defect in the design or construction of the development.~~

~~Existing law also requires the board to provide written notice to members of the association regarding any civil action filed by the association against the declarant or other developer of a common interest development for alleged damage to certain areas or interests that the association is obligated to maintain or repair, as specified.~~

~~This bill would revise and recast these provisions to, among other things, specify notice requirements with respect to a builder who requests to confer with a board and to conduct testing in order to evaluate a claim. It also would require the parties to a construction defect action, as defined, upon agreement of the plaintiff and defendant, to meet for the purpose of preparing specified court reports within 90 days after the first service of the first answer by the first answering defendants.~~

~~(2) Under existing law,~~

~~*Existing law provides that* if parties to pending litigation stipulate for settlement of the case, or part thereof, as specified, the court may enter judgment pursuant to the settlement and, if requested, may retain jurisdiction over the parties to enforce the settlement until its full performance.~~

~~This bill would authorize the court to also enter this judgment pursuant to the settlement of a pending construction defect action, as defined, if, where a party's contribution is paid on its behalf pursuant to a policy for insurance, the parties stipulate through their respective counsel.~~

~~(3) Existing~~

~~*Existing law makes it a misdemeanor for any person to attempt or purport to exercise the powers, rights, and privileges of a corporation that has been suspended.*~~

~~This bill would exempt from this provision any insurer or counsel retained by an insurer on behalf of the suspended corporation who provides a defense for the suspended corporation in a civil action based upon a claim for personal injury, property damage, or economic losses and prosecutes subrogation, contribution, or indemnity rights in the name of the suspended corporation.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1368.4 of the Civil Code is~~
2 ~~repealed.~~

3 ~~SEC. 2. Section 1375 of the Civil Code is amended to~~
4 ~~read:~~

5 ~~1375. (a) Before an association commences an action~~
6 ~~for damages against a builder of a common interest~~
7 ~~development based upon a claim for defects in the design~~
8 ~~or construction of the common interest development, all~~
9 ~~of the requirements of subdivisions (b) to (g), inclusive,~~
10 ~~shall be met, except as otherwise provided in this section.~~

11 ~~(b) (1) The association shall give written notice to the~~
12 ~~builder against whom the claim is made.~~

13 ~~(A) This notice shall include both of the following:~~

14 ~~(i) A preliminary list of defects and their general~~
15 ~~locations.~~

16 ~~(ii) Either a summary of the results of testing~~
17 ~~conducted to determine the nature and extent of defects~~
18 ~~or the actual test results, if this testing has been~~
19 ~~conducted.~~

20 ~~(B) This notice may include a request for the builder~~
21 ~~to provide the association with:~~

22 ~~(i) A complete set of grading plans, site plans,~~
23 ~~improvement plans, architectural drawings or plans,~~
24 ~~including structural drawings and calculations,~~
25 ~~construction drawings, and landscape architectural plans,~~
26 ~~along with any change orders, if any.~~

27 ~~(ii) A complete set of electrical plans, plumbing plans,~~
28 ~~mechanical and heating, ventilation, and air-conditioning~~
29 ~~(HVAC) plans, if any.~~

30 ~~(iii) Written warranties of the contractor,~~
31 ~~subcontractors, suppliers, and manufacturers that are still~~
32 ~~in effect.~~

33 ~~(2) The association's notice shall, upon delivery of the~~
34 ~~notice to the builder, commence a period of time not to~~
35 ~~exceed 90 days from delivery of the notice, unless the~~
36 ~~association and builder agree to a longer period, not~~
37 ~~exceeding an additional 90 days, during which the~~
38 ~~association, the builder, and other parties that may be~~

1 reasonably required to respond to a claim for damages,
2 including, but not limited to, design professionals,
3 insurance carriers, material suppliers, or subcontractors,
4 shall either, in accordance with the requirements of this
5 section, attempt to settle the dispute or attempt to agree
6 to submit it to alternative dispute resolution. After the
7 expiration of 90 days from the delivery of the notice or,
8 if the association and the builder have agreed to a longer
9 period not to exceed a total of 180 days after the expiration
10 of that period, the association and the builder shall be
11 relieved of any further obligation to satisfy the
12 requirements of this section.

13 (3) (A) Except as provided in this section and
14 notwithstanding any other provision of law, the notice by
15 the association shall, upon mailing, toll all statutory and
16 contractual limitations on actions against all parties who
17 may be responsible for the defects which may be claimed,
18 whether named in the notice or not, including claims for
19 indemnity applicable to the claim, for a period of 180 days.

20 (B) At any time, the builder may give written notice
21 to cancel the tolling of the statute of limitations provided
22 in this section. Upon delivery of this written cancellation
23 notice, the association shall be relieved of any further
24 obligation to satisfy the requirements of this section. The
25 tolling of all applicable statutes of limitations shall cease
26 60 days after the written notice of cancellation by the
27 builder is delivered to the association.

28 (c) (1) Within 25 days of the date the association
29 delivers the notice required by subdivision (b), the
30 builder may request in writing to meet and confer with
31 the board of directors of the association, and to inspect the
32 project and conduct testing, including testing that may
33 cause physical damage to any property in the
34 development, in order to evaluate the claim. If the
35 builder does not make a timely request to meet and
36 confer with the board of directors of the association, or to
37 conduct inspection and testing, the association shall be
38 relieved of any further obligation to satisfy the
39 requirements of this section. Unless the builder and
40 association otherwise agree, the meeting shall take place

~~no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (b) of Section 1363.05. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:~~

~~(A) The nature and extent of the claimed defects.~~

~~(B) Proposed methods of correction, to the extent there is sufficient information.~~

~~(C) Proposals for submitting the dispute to alternative dispute resolution.~~

~~(D) Requests from the builder to inspect the project and conduct testing.~~

~~(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1), the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to the following parties:~~

~~(A) Any subcontractor, material supplier, design professional, or other party which the builder reasonably believes may be responsible, in whole or in part, for the design, construction, or supply of, the building components which are the subject of the preliminary list of defects included in the notice provided by the association to the builder pursuant to subdivision (b). Any subcontractor, material supplier, design professional, or other party provided this notice by the builder shall submit the notice to its insurer. Upon receipt, this insurer shall be obligated to attend the meeting pursuant to paragraph (1), unless it is the insurer of a subcontractor that has declined to participate in the meeting as provided for in paragraph (4). However, neither the notice nor attendance at the meeting pursuant to paragraph (1) shall change any of the duties or obligations of the insurer otherwise established under the contract of insurance, including, but not limited to, any duty to defend or to provide counsel. The insured shall have an obligation to act reasonably and cooperate with~~

~~the insurer in providing the insurer with advance notice of any meetings concerning the possible claims.~~

~~(B) Any insurer that has issued a policy to the builder which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages.~~

~~(3) The builder shall inform the association when the builder delivers the notice to each party pursuant to paragraph (2).~~

~~(4) Any subcontractor may in a letter delivered by first-class mail to the builder decline to participate in the meetings that occur in accordance with the requirements of this section. Nothing in this paragraph shall alleviate the subcontractor of its responsibility to notify its insurer as prescribed in subdivision (c) of this section.~~

~~(5) If the builder requests in writing to meet and confer with the board of directors of the association, the builder shall provide the association on or before the date of this meeting with all documents requested by the association pursuant to subdivision (b).~~

~~(6) If the builder fails to comply with paragraph (5), the association shall be relieved of any further obligation to satisfy the requirements of this section.~~

~~(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 45 days from the date the association makes these areas available for inspection and testing. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this section. The manner in~~

1 ~~which the inspection and testing shall be conducted, and~~
2 ~~the extent of any inspection and testing to be conducted~~
3 ~~beyond that which was conducted by the association prior~~
4 ~~to sending the notice, shall be set by agreement of the~~
5 ~~association and builder.~~

6 ~~(2) The builder shall pay all costs of inspection and~~
7 ~~testing that are requested by the builder, shall restore the~~
8 ~~property to the condition which existed immediately~~
9 ~~prior to the testing, and shall indemnify the association~~
10 ~~and owner of the separate interest for any damages~~
11 ~~resulting from the testing.~~

12 ~~(3) Interior inspections of occupied separate interests~~
13 ~~and destructive testing of any interior of a separate~~
14 ~~interest shall be conducted in accordance with the~~
15 ~~governing documents of the association, unless otherwise~~
16 ~~agreed to by the owner of the separate interest. If the~~
17 ~~governing documents of the association do not provide~~
18 ~~for inspection or testing of separate interests, this~~
19 ~~inspection or testing shall be conducted in a manner and~~
20 ~~at a time agreed to by the owner of the separate interest.~~

21 ~~(4) The results of the inspection and testing shall not~~
22 ~~be inadmissible in evidence in any civil action solely~~
23 ~~because the inspection and testing was conducted~~
24 ~~pursuant to this section.~~

25 ~~(e) (1) Within 30 days of the completion of inspection~~
26 ~~and testing or within 30 days of a meeting held pursuant~~
27 ~~to subdivision (e) if no inspection and testing is~~
28 ~~conducted pursuant to subdivision (d), the builder shall~~
29 ~~submit to the association all of the following:~~

30 ~~(A) A request to meet with the board to discuss a~~
31 ~~written settlement offer.~~

32 ~~(B) A written settlement offer, and a concise~~
33 ~~explanation of the specific reasons for the terms of the~~
34 ~~offer. This offer may include an offer to submit the~~
35 ~~dispute to alternative dispute resolution.~~

36 ~~(C) A statement that the builder has access to~~
37 ~~sufficient funds to satisfy the conditions of the settlement~~
38 ~~offer.~~

39 ~~(D) A summary of the results of testing conducted for~~
40 ~~the purpose of determining the nature and extent of~~

1 defects, if this testing has been conducted, unless the
2 association provided the builder with actual test results
3 pursuant to subdivision (b), in which case the builder
4 shall provide the association with actual test results.

5 (2) If the builder does not timely submit the items
6 required by this subdivision, the association shall be
7 relieved of any further obligation to satisfy the
8 requirements of this subdivision only.

9 (3) No less than 10 days after the builder submits the
10 items required by this paragraph, the builder and the
11 board of directors of the association shall meet and confer
12 about the builder's settlement offer, including any offer
13 to submit the dispute to alternative dispute resolution.

14 (f) (1) At any time after the notice required by
15 subdivision (b) is delivered to the builder, the association
16 and builder may agree in writing to modify or excuse any
17 of the time periods or other obligations imposed by this
18 section, except for the 180-day limitation described in
19 subdivision (b).

20 (2) Except for the notice required pursuant to
21 subdivision (g), all notices, requests, statements, or other
22 communications required pursuant to this section shall be
23 delivered by one of the following:

24 (A) By first-class registered or certified mail, return
25 receipt requested.

26 (B) In any manner in which it is permissible to serve
27 a summons pursuant to Section 415.10 or 415.20 of the
28 Code of Civil Procedure.

29 (g) (1) Within 30 days after the board of directors of
30 the association accepts or rejects a settlement offer
31 pursuant to subdivision (e) and at least 30 days prior to
32 the filing of a civil action described in subdivision (a), the
33 board shall notify the members of the association that a
34 meeting will be held to discuss all of the following:

35 (A) The preliminary list of defects provided by the
36 association to the builder.

37 (B) The terms of the settlement offer or agreement.

38 (C) The reasons for the board's acceptance or
39 rejection of the settlement offer.

1 ~~(D) The options, including civil actions, that are~~
2 ~~available to address the preliminary list of defects and a~~
3 ~~statement of the various alternatives that are reasonably~~
4 ~~foreseeable by the association to pay for those options and~~
5 ~~whether these payments are expected to be made from~~
6 ~~the use of reserve account funds or the imposition of~~
7 ~~regular or special assessments, or emergency assessment~~
8 ~~increases.~~

9 ~~(2) Written notice of the meeting shall be sent to each~~
10 ~~member of the association no less than 15 days before the~~
11 ~~meeting is held. This notice shall include the terms of the~~
12 ~~settlement offer or agreement, the options, including~~
13 ~~civil actions, that are available to address the preliminary~~
14 ~~list of defects, a list of documents provided by the~~
15 ~~association to the builder pursuant to subparagraph (A)~~
16 ~~of paragraph (1) of subdivision (b), and information~~
17 ~~about where and when the members of the association~~
18 ~~may inspect these documents.~~

19 ~~(3) The contents of the notice and the discussions at~~
20 ~~the meeting are privileged communications and are not~~
21 ~~discoverable or admissible in evidence in any civil action.~~
22 ~~This privilege may be waived, however, by the holder of~~
23 ~~the privilege. This section may not be construed to~~
24 ~~impose upon the association a duty to disclose these~~
25 ~~communications to any person other than a member of~~
26 ~~the association.~~

27 ~~(4) The builder shall pay all expenses attributable to~~
28 ~~sending the notice to all members of the association. The~~
29 ~~builder shall also pay the expense of holding the meeting,~~
30 ~~not to exceed three dollars (\$3) per member of the~~
31 ~~association.~~

32 ~~(5) Notwithstanding the requirements of this~~
33 ~~subdivision, if the association has reason to believe that~~
34 ~~the applicable statute of limitations will expire before the~~
35 ~~association files a civil action, the association may give the~~
36 ~~notice provided for in this subdivision within 30 days after~~
37 ~~the filing of the action.~~

38 ~~(h) (1) The only method of seeking judicial relief for~~
39 ~~the failure of the association to comply with this section~~
40 ~~shall be the assertion, as provided for in this subdivision,~~

~~1 of a procedural deficiency to an action for damages by the
2 association against the builder after such an action has
3 been filed. A verified application asserting such a
4 procedural deficiency shall be filed with the court no later
5 than 90 days after the answer to the plaintiff's complaint
6 has been served, unless the court finds that extraordinary
7 conditions exist.~~

~~8 (2) Upon the verified application of the association or
9 the builder alleging substantial noncompliance with this
10 section, the court shall schedule a hearing within 21 days
11 of the application to determine whether the association
12 or builder has substantially complied with this section.
13 The issue may be determined upon affidavits or upon oral
14 testimony, in the discretion of the court.~~

~~15 (3) (A) If the court finds that the association did not
16 substantially comply with this section, the court shall stay
17 the action for up to 90 days to allow the association to
18 establish substantial compliance. The court shall set a
19 hearing within 90 days to determine substantial
20 compliance by the association. At any time, the court
21 may, for good cause shown, extend the period of the stay
22 upon application of the association.~~

~~23 (B) If, within the time set by the court pursuant to this
24 section, the association has not established that it has
25 substantially complied with this section, the court shall
26 determine if, in the interest of justice, the action should
27 be dismissed without prejudice, or if another remedy
28 should be fashioned. Under no circumstances shall the
29 court dismiss the action with prejudice as a result of the
30 association's failure to substantially comply with this
31 section. In determining the appropriate remedy, the
32 court shall consider the extent to which the builder has
33 complied with this section.~~

~~34 (C) If the alleged noncompliance of either the builder
35 or the association resulted from the unreasonable
36 withholding of consent for inspection or testing by an
37 owner of a separate interest, it shall not be considered
38 substantial noncompliance, provided that the party
39 alleged to be out of compliance did not encourage the
40 withholding of consent.~~

1 ~~(4) If the court finds that the builder did not pay all of~~
2 ~~the costs of inspection and testing pursuant to paragraph~~
3 ~~(2) of subdivision (d), or that the builder did not pay its~~
4 ~~required share of the costs of holding the meeting and of~~
5 ~~all expenses attributable to sending the settlement offer~~
6 ~~pursuant to paragraph (4) of subdivision (g) of this~~
7 ~~section, the court shall order the builder to pay any~~
8 ~~deficiencies within 30 days, with interest, and any~~
9 ~~additional remedy which the court determines, in the~~
10 ~~interest of justice, should be fashioned.~~

11 ~~(i) The amendments made to this section by an act~~
12 ~~enacted within the second calendar year of the 1997-98~~
13 ~~Regular Session shall not be construed to apply to the~~
14 ~~resolution of a dispute pursuant to this section if the~~
15 ~~association mailed its notice pursuant to subdivision (b)~~
16 ~~prior to January 1, 1999.~~

17 ~~(j) As used in this section:~~

18 ~~(1) "Association" shall have the same meaning as~~
19 ~~defined in subdivision (a) of Section 1351.~~

20 ~~(2) "Builder" means the declarant, as defined in~~
21 ~~subdivision (g) of Section 1351.~~

22 ~~(3) "Common interest development" shall have the~~
23 ~~same meaning as in subdivision (e) of Section 1351,~~
24 ~~except that it shall not include developments or projects~~
25 ~~with less than 20 units.~~

26 ~~SEC. 3. Title 7.5 (commencing with Section 576.5) is~~
27 ~~added to Part 2f the Code of Civil Procedure, to read:~~

28
29 ~~TITLE 7.5. CONSTRUCTION DEFECT ACTION~~
30

31 ~~576.5. Upon agreement of the plaintiff and defendant,~~
32 ~~the following procedures shall apply:~~

33 ~~(a) Within 90 days after service of the first answer by~~
34 ~~the first answering defendants in a construction defect~~
35 ~~action, filed on or after January 1, 1999, counsel for each~~
36 ~~party served with the action, all named parties served in~~
37 ~~the action, and all insurance representatives of any~~
38 ~~parties served in the action, if any, shall meet to make the~~
39 ~~initial report required pursuant to subdivision (c) and~~
40 ~~prepare a joint report to be submitted to the court~~

~~pursuant to subdivision (d). Counsel for the plaintiff shall have the duty of scheduling the meeting, and, where there are multiple defendants and cross-defendants, shall take all reasonable steps to ensure that the scheduling of the meeting will permit counsel, the parties, and the insurance representatives to attend. These steps shall include, but are not limited to, notifying each defendant of the scheduled meeting within five days after service of each defendant's answer. Counsel for cross-complainants, if any, shall be responsible for notifying cross-defendants of the scheduled meeting within five days after service of each cross-defendant's answer. Where necessary, in actions where there are multiple defendants, and upon a showing of good cause, counsel for the plaintiff may apply, on an ex parte basis, for a reasonable extension of time within which to hold the early meeting.~~

~~(b) If the parties to the suit stipulate that the parties have substantially complied with Section 1375 of the Civil Code, the parties may, within the 90-day time limitation described in subdivision (a), submit a report to the court that provides the information described in subdivision (c) and any other information which may be helpful to the court in setting the case for conference. Upon submission of this report, the parties may, within this 60-day time limitation, request permission to bypass the early meeting requirement of this section. In considering this request, the court shall determine whether an early meeting of parties will advance judicial economy.~~

~~(c) During the early meeting of parties, the parties shall discuss and report to the court on all of the following issues:~~

~~(1) Adoption of alternative dispute resolution procedures, including prediscovery settlement discussions.~~

~~(2) A preliminary discovery plan and schedule, including whether discovery should be conducted in phases and, if so, the order of discovery, and whether discovery should be limited by order of the court and a proposed discovery cut-off date.~~

~~(3) Adoption of a case management order.~~

1 ~~(4) Trial estimates, to the extent known.~~

2 ~~(5) A proposed schedule for court approval to add any~~
3 ~~new parties by any of the existing parties.~~

4 ~~(d) Within 14 days after the early meeting of parties,~~
5 ~~those who attended the early meeting are mutually~~
6 ~~obligated to file a Joint Report of Early Meeting with the~~
7 ~~court. The Joint Report of Early Meeting shall report on~~
8 ~~all matters described in subdivision (c), and any other~~
9 ~~information which may be helpful to the court in setting~~
10 ~~the case for a status conference.~~

11 ~~(e) Counsel for plaintiff and each cross-complainant~~
12 ~~shall be responsible for giving notice of the requirements~~
13 ~~of this section to counsel for each defendant along with~~
14 ~~the service copy of any complaint or cross-complaint.~~

15 ~~(f) The filing of an amended pleading shall not impose~~
16 ~~any obligations pursuant to this section, except that~~
17 ~~plaintiffs shall have an affirmative duty to schedule an~~
18 ~~additional meeting pursuant to subdivision (a), and~~
19 ~~counsel for plaintiffs and cross-complainants shall be~~
20 ~~responsible for notifying defendants and~~
21 ~~cross-defendants, respectively, of the scheduled~~
22 ~~additional meeting.~~

23 ~~(g) Upon noticed motion, the court shall have the~~
24 ~~power to issue monetary or pleading sanctions for any~~
25 ~~violation of this section by any served party.~~

26 ~~(h) As used in this section, “construction defect~~
27 ~~action” shall mean any civil action that seeks monetary~~
28 ~~recovery against a developer, builder, design~~
29 ~~professional, general contractor, material supplier, or~~
30 ~~subcontractor of any residential dwelling based upon a~~
31 ~~claim for alleged defects in the design or construction of~~
32 ~~the residential dwelling unit.~~

33 ~~(i) This section shall apply only to construction defect~~
34 ~~claims filed by a homeowners association.~~

35 **SEC. 4.—**

36 **SECTION 1.** Section 664.7 is added to the Code of
37 Civil Procedure, to read:

38 664.7. (a) Notwithstanding Section 664.6, if parties to
39 a pending construction defect action stipulate personally
40 or, where a party’s contribution is paid on its behalf

1 pursuant to a policy of insurance, the parties stipulate
2 through their respective counsel, in a writing signed by
3 the parties outside the presence of the court or orally
4 before the court, for settlement of the case, or part
5 thereof, the court, upon motion, may enter judgment
6 pursuant to the terms of the settlement. If requested by
7 the parties, the court may retain jurisdiction over the
8 parties to enforce the settlement until performance in full
9 of the terms of the settlement.

10 (b) It is the intent of the Legislature that this section
11 modify the holding of *Levy v. Superior Court* (1995), 10
12 Cal. 4th 578, regarding the authority of counsel in a
13 construction defect action to bind a party to a settlement.

14 (c) For purposes of this section, “construction defect
15 action” shall mean any civil action that seeks monetary
16 recovery against a developer, builder, design
17 professional, general contractor, material supplier, or
18 subcontractor of any residential dwelling based upon a
19 claim for alleged defects in the design or construction of
20 the residential dwelling unit.

21 ~~SEC. 5.—~~

22 *SEC. 2.* Section 19719 of the Revenue and Taxation
23 Code is amended to read:

24 19719. (a) Any person who attempts or purports to
25 exercise the powers, rights, and privileges of a
26 corporation that has been suspended pursuant to Section
27 23301 or who transacts or attempts to transact intrastate
28 business in this state on behalf of a foreign corporation,
29 the rights and privileges of which have been forfeited
30 pursuant to the section, is punishable by a fine of not less
31 than two hundred fifty dollars (\$250) and not exceeding
32 one thousand dollars (\$1,000), or by imprisonment not
33 exceeding one year, or both fine and imprisonment.

34 (b) This section shall not apply to any insurer, or to
35 counsel retained by an insurer on behalf of the suspended
36 corporation, who provides a defense for a suspended
37 corporation in a civil action based upon a claim for
38 personal injury, property damage, or economic losses
39 against the suspended corporation, and, in conjunction
40 with this defense, prosecutes subrogation, contribution,

1 or indemnity rights against persons or entities in the
2 name of the suspended corporation.
3 (c) Nothing in this section shall create or limit any
4 obligation upon an insurer to defend a suspended
5 corporation.

O

